IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 952 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
PUNAMBHAI @ KALIYO VARVABHAI RAVAL & 2

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Appearance :
MR KC SHAH APP for Appellant
MR UA TRIVEDI for Respondents No.1-3

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 03/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

[1] The instant appeal is preferred by the State under Section 378 of the Code of Criminal Procedure, 1973 against the judgment and order delivered by the learned Additional Sessions Judge, Fast Track Court No.3, District: Gandhinagar, on 18th June, 2004 in Sessions Case No.29/2003 whereby all the three present respondents being accused of the said Sessions Case came to be acquitted by the trial Court for the charges leveled against them under Sections 302, 324, 323, 504 and 34 of the Indian Penal Code as well as under Section 135 of the Bombay Police Act.

[2] Learned APP Mr.K.C.Shah for the appellant – State and learned advocate Mr.U.A.Trivedi for the respondents were heard. Leave to appeal is granted. Appeal is admitted. Learned advocate Mr.U.A.Trivedi waives service on behalf of the respondents. Both the

learned counsels request this Court to hear the matter finally in peculiar facts and circumstances of this case and Record and Proceedings of the trial Court are available with the Court as well as the extra copies of the evidence recorded during the trial and the documents produced before the trial Court, are being provided to the Court for final hearing. The requests of learned counsels were granted in peculiar facts and circumstances of this case and the matter was heard finally.

[3] According to the prosecution case, the incident occurred on 8th September, 2002 in Gandhinagar at Sector G-5. Sureshbhai Shridhar Sheti, P.W-3 owned one rickshaw lorry for serving fast food named as Mysore Dhosa in Sector G-5 of Gandhinagar. Two workers were engaged for preparing food on the said lorry and they were P.W.4 - Naginbhai Kasturbhai and P.W.2 – Nanalal Manekchandji. Deceased in this incident is Kailashbhai Bhagwandas Sharma was working as Accountant on said lorry and was sitting at counter. On 8th September, 2002, according to the prosecution case, Sureshbhai Shridhar Sheti after putting all necessary items at lorry had been to his

house and received a phone call that his Accountant Kailashbhai was beaten by Kaliyo and he was injured. Immediately, he came to the said lorry and he inquired from the deceased Kailashbhai, what had happened. Kailashbhai informed him that accused No.1 – Punambhai @ Kaliyo Varvabhai Raval, who was plying a rickshaw and owner of Pan Bidi Cabin, accused No.3 – Popatji Shantuji Vaghela and accused No.2 – Rakeshbhai Laxmanbhai Patani, who was vegetable vendor had been to the lorry and had taken food, when he (deceased Kailashbhai) demanded money for the food, he was beaten by all these three accused by fist and they give abuses to deceased. The deceased further conveyed to Sureshbhai that a blow was inflicted on left side of his chest. He (deceased Kailashbhai) was beaten by belt and iron rod. Complainant – Sureshbhai Shridhar Sheti waited for his brother, who was residing at Sabarmati, Ahmedabad and was informed by Sureshbhai Shridhar Sheti to reach at Sector G-5. When elder brother of Sureshbhai Shridhar Sheti reached at the scene of offence, both the brothers shifted deceased Kailashbhai at Gandhinagar Civil Hospital and Sureshbhai Shridhar Sheti gave a complaint on 9th September, 2002 at 10.15

a.m. before Gandhinagar City Police Station. Deceased Kailashbhai was first treated by P.W.1 – Dr. Kantilal Ranchhodlal Patel at Gandhinagar and according to him, his spleen was injured, a laparotomy was done by Dr.Bhatt on 9th September, 2002 and spleen was removed. Thereafter, the patient was moved to Ahmedabad Civil Hospital where he died on 23rd September, 2002 on account of gangrene and septicemia.

[4] On complaint being registered at Gandhinagar City Police Station, investigation was put into motion. On 9th September, 2002, P.W.10 – Surmaji Rupaji Baranda, P.S.O., Gandhinagar City Police Station received a Vardhi, placed on record at Ex.31, that injured Kailashbhai was brought to the hospital on account of scuffle took place at 23.15 hours at Sector 16, Near Mysore Dhosa Centre and he was brought to the hospital. This Vardhi was given to him in the Police Station by Rameshbhai, A.S.I., and in pursuance of that Vardhi, P.S.I. Chhotabhai Nathalal Patel, P.W.11, on 9th September, 2002 went to the hospital and recorded the complaint of Sureshbhai Shridhar Sheti which is placed on record at Ex.14.

The investigation was entrusted, thereafter, to Joitaji Mathurji, P.W.13 for investigating the crime, who recorded the statement, drew a panchnama of scene of offence, drew a panchnama of discovery of articles and after the death of the deceased Kailashbhai, he transferred investigation to P.W.12 – Prakashchandra Ramjibhai Mahera, Police Inspector, Gandhinagar Sector 21 Police Station, who submitted a charge-sheet in the Court of learned Judicial Magistrate, First Class. The case was, thereafter, committed to the Court of Sessions at Gandhinagar, which was registered as Sessions Case No.29/2003. Learned Additional Sessions Judge framed charges for the above said offences against all the three accused vide Ex.5 on 16th March, 2004 and the same was read over to each of the accused. All the accused pleaded not guilty and, therefore, prosecution examined as many as 14 witnesses and produced on record 11 documents to prove it's case. After evidence of the prosecution was over, incriminating circumstances appeared against each of the accused, was brought to the notice of the accused by the learned trial Judge and the statements of each of the accused was recorded under Section 313 of the Code of Criminal

Procedure, 1973. The case of each of the accused was of total denial and in defence, they stated that a false case was filed against them. Thereafter, prosecution as well as defence were heard in detail by the trial Court and ultimately, the trial Court came to the above conclusion to acquit the accused and hence, this appeal.

[5] Learned APP Mr.K.C.Shah vehemently urged that the reasons assigned by the trial Court for acquitting the accused more particularly giving benefit of doubt are erroneous and palpably wrong, as such there is no conflict between ocular and medical evidence as has been stated by the trial Court. The first Doctor i.e. P.W.1 – Kantilal Ranchhoddas Patel of Gandhinagar Civil Hospital in very clear terms established that deceased had a knife blow on side of his stomach and it has also been established that said blow was inflicted during the quarrel in question. Deceased reached immediately to the hospital and as stated by P.W.3 owner of lorry Sureshbhai Shridhar Sheti that deceased conveyed to him that he received a knife blow in this scuffle inflicted by accused No.1, is a trustworthy version

and there is no reason to discard this evidence. It is submitted that one witness, out of two, of the incident turned hostile, but the other witness P.W.2 – Nanalal Manekchandji supported and corroborated the version of the P.W.3 – Sureshbhai Shridhar Sheti and what was found in postmortem was gangrene and cause of death was septicemia, but that was on account of the wound which the deceased received during the scuffle. It is submitted that this evidence is extremely trustworthy and the defence of the accused that some amount was due to complainant from the accused is totally unbelievable. The wound was so deep that it damaged the spleen through and through and, therefore, injured died on account of gangrene. The ocular evidence is in support of this fact and, therefore, the conclusion reached by the trial Court to acquit the accused is totally erroneous and requires to be set aside. Going through the judgments thoroughly, learned APP stated that appeal is required to be allowed and the accused are required to be convicted, if not for the murder than the lesser offence as the incident in question and the wound caused by the accused both are proved by the prosecution beyond doubt.

[6] As against that learned advocate Mr.U.A.Trivedi for the respondents supported the judgment and order impugned in this appeal and submitted that the deceased before P.W.-1 Kantilal Ranchhoddas Patel gave only history about the stab wound, but did not state anything about the quarrel and omitted to give names of the accused. P.W.2 – Nanalal Manekchandji stated in his deposition that he noticed that accused No.1 inflicted blow by an iron rod and he intervened in the quarrel. P.W.2 further stated that P.W.2 was informed by Kailashbhai that he was injured by the knife, but P.W.2 had not seen that injury. While, other eye witness P.W.4 – Naginbhai Kasturbhai did not support the prosecution case. Learned advocate submitted that complainant – Sureshbhai Shridhar Sheti was not an eye witness, but stated to the extent that deceased conveyed to him that he was injured by stab wound and before him also, deceased did not say that who stab wound that Kailashbhai did not give other details. In these circumstances, learned advocate for the respondents submitted that no reliance can be placed on this evidence, while all the panchas of recovery and other panchnamas were turned hostile and that the F.I.R.

was lodged very late. Referring to the medical evidence, it has been stated that there is confusion in the evidence of P.W.-1 Dr. Kantilal Ranchhoddas Patel and P.W.14 – Dr. Chandrakant Bachubhai Patel in respect of the injury received by the deceased and, therefore, it cannot be concluded positively that death of the deceased was direct result of the stab wound which was noted by P.W.1 – Kantilal Ranchhoddas Patel. In these circumstances, when through the evidence of eye witness, the role played by the accused in the fight was found obscure by the trial Judge, the course available to the trial Court has to give benefit of doubt to the accused and the learned trial Judge rightly, after assigning sound reasons, acquitted the accused. It is further submitted that this being an appeal against the acquittal, the orders of acquittal cannot lightly be interfered unless reasons given by the trial Court are perverse. It is submitted that the State is not able to demonstrate that how the reasons assigned by the trial Court were perverse.

[7] This Court has undertaken a complete and comprehensive appreciation of all vital features of

the case and the entire evidence on record with reference to broad and reasonable probabilities of the case are evaluated. We have gone through each corner of Record and Proceedings of the trial Court and have re-appreciated the evidence independently. We have taken into consideration the contentions raised by both the sides in this appeal. This being an appeal against the acquittal, we have scanned carefully the reasons assigned by the trial Court for acquittal.

[8] Referring to the evidence recorded during the trial and appreciation of the same by the trial Court and with reference to the contentions raised, reappreciating the evidence, it clearly appears that material witnesses are P.W.3 – Sureshbhai Shridhar Sheti, complainant examined at Ex.13, P.W.2 – Nanalal Manekchandji examined at Ex.12, P.W.4 – Naginbhai Kasturbhai examined at Ex.16. P.W.2 and 4 are the eye witnesses. P.W.1 – Kantilal Ranchhoddas Patel examined at Ex.10 treated the patient and deceased first point in time at Gandhinagar Civil Hospital and P.W.14 – Chandrakant Bachubhai Patel examined at Ex.42 conducted postmortem of the deceased on 24th

September, 2002 at Ahmedabad Civil Hospital. The material evidence in this respect is also of P.W.13 – Joitaji Mathurji examined at Ex.41, who was first Investigating Officer and P.W.12 – Prakashchandra Ramjibhai examined at Ex.33 who was second Investigating Officer.

[9] Except the above witnesses, P.W.5 - Sureshkumar Ruplal examined at Ex.17 is a panch of panchnamas at Ex.18 and at Ex. 19 by which clothes of accused were seized by the police to send the same to Forensic Science Laboratory. This panchnama at Ex.18 was drawn on 28th September, 2002 and Ex.19 was the panchnama in respect of accused No.1, who, according to the prosecution case, presented muddamal knife, before police in presence of panchas. However, P.W.5 - Sureshkumar Rooplal did not support any of these panchnamas. An inquest panchnama is placed at Ex.22. P.W.6 – Dineshbhai Sedhabhai examined at Ex.23, is also panch of panchnama at Ex.23/A by which it is alleged that Popatji presented, before the police a belt used in the crime. This witness also did not support the prosecution case. P.W.7 – Krushna Koraga Sheti examined at Ex.24 is a panch of panchnama at Ex.25 by which police recovered the clothes of

deceased, but he has not supported the prosecution case. P.W.8 – Dineshkumar Dhanaji Ravat examined at Ex.26 is a second panch of panchnamas at Ex.18 and 19 referred to above, but he has also not supported the prosecution case and was declared hostile. P.W.9 – Rajubhai Mithubhai examined at Ex.27 is a second panch of panchnama at Ex.25, but according to him one Sunilbhai presented the clothes of deceased and in his cross-examination, he admitted that at the Police Station, who presented the clothes of the deceased, he did not know. When he went to the Police Station, the clothes were lying on the table and, therefore, no reliance can be placed on this witness. P.W.10 – Surmaji Rupaji Baranda examined at Ex.30 is a witness, who was P.S.O. and received a Vardhi from A.S.I. Rameshbhai that deceased was admitted in Gandhinagar Civil Hospital in injured condition. He produced Vardhi at Ex.31. P.W.11 – Chhotalal Nathalal Patel examined at Ex.32 was the then P.S.I., Gandhinagar City Police Station and in pursuance of the Vardhi at Ex.31, he visited Gandhinagar Civil Hospital and recorded the complaint of Sureshbhai Shridhar Sheti, as deceased was not conscious. Thereafter, he entrusted investigation to Police Head Constable Joitaji, P.W.13.

[10] Now the evidence of afore-stated witnesses, who are material is required to be noted. P.W.1 – Kantilal Ranchhoddas Patel examined at Ex.10, stated that injured without police yadi, was brought to him on 8th September, 2002 at 11.40 p.m. He found the following injuries on the body of the deceased.

Stab wound on left side of chest on axillary line. 10th inter coastal space 1 cm x 0.75 cm. Elliptical shape with clear cut edges deep to deep structure bleeding ++.

Lapartomy done by Dr.Bhatt on 9th September, 2002 there was through and through wound on spleen. Splenectomy done.

He stated that in history the patient stated that at 11.00 a.m a stab wound was given to him and the patient was conscious. In his cross-examination, he stated that along with patient, one Shivrambhai, his relative was there. Except the above history, no other detail was given by the patient. He admitted that except the stab wound which he treated, no other injury was found on the body of the patient. He

admitted that if the injury was caused by an iron rod and belt there might be visible marks of injury. He stated that after operating the patient, he was shifted to Civil Hospital Ahmedabad. Why the patient was transferred to Ahmedabad, he did not know.

[11] While P.W.14 – Chandrakant Bachubhai Patel, who conducted postmortem on 24th September, 2002 stated that the deadbody had open wound over abdomen, just below the Epigastric region, over the umbilical region, wound size about 23 x 8 cm. On Examination, a mesh (plastic net) pneum was found in wound. Organs stomach intestine etc. were found discharging pus. A stab wound was present at ileum part. Both iliac fossa 3 x 1 cm stitch wound. According to Doctor, injury was anti-mortem and there were internal injuries. Doctor stated that the cause of death was septicemia due to the injuries and followed by gangrene of intestines. He submitted on record postmortem note at Ex.43. In his examination-in-cross, he admitted that there was no other injury, except mentioned in Column No.17 of Ex.43 postmortem note. He submitted that the injuries which were of size of 23 cm. noted by him in Column No.17 of Ex.43 were intro-ganic and those injuries were caused

during surgery. This was incision, according to Doctor for taking stitches. He admitted that before operation, normal check up of the body, like blood pressure, diabetes was a necessary procedure. Septicemia could be infected within 24 hours. In this case, the patient developed septicemia in 24 hours. There may be many reasons for infection. He admitted that on account of this injury, there was septicemia and, therefore, the pus was spread in liver, which caused death.

[12] Now remains the evidence of two witnesses to be considered out of three material witnesses because P.W.4 – Naginbhai Kasturbhai examined at Ex.16 was turned hostile, though he was an eye witness and did not support the prosecution case at all. The other two witnesses are complainant - Sureshbhai Shridhar Sheti, P.W.3 to whom deceased Kailashbhai stated that how the incident had occurred and P.W.2 – Nanalal Manekchandji examined at Ex.12, who actually witnessed the incident.

[13] P.W.3 – Sureshbhai Shridhar Sheti examined at Ex.13 stated that he was called to his lorry from his home and met injured Kailashbhai. On inquiry,

injured Kailashbhai stated to him that three persons i.e. Kaliyo, Popatlal and Rakesh had come to lorry and they took snack. When he (Kailashbhai) demanded the amount of food, all the three persons abused and had beaten him (Kailashbhai). The knife blow was given upon him (Kailashbhai). He (Kailashbhai) was beaten by belt and iron rod. He (complainant) called his elder brother and stated that Kailashbhai was got admitted in Gandhinagar Civil Hospital and, thereafter, on the next day, he gave complaint which he produced on record at Ex.14. He further stated that iron rod injury was caused on left hand shoulder of Kailashbhai and he was also beaten by belt. The knife blow was inflicted on stomach. In his examination-in-cross, he stated that at the scene of offence, many people were gathered. Kailashbhai was injured on hand and was bleeding from this injury. Gandhinagar Civil Hospital was only about 3 minutes distance from the scene of offence. He stated that they were purchasing vegetables from accused Ramesh from his lorry. He denied the fact that they owed Rs.21,000/- of vegetables to accused Rakesh. He denied the fact that he did not state in his complaint that Kailashbhai conveyed him that all the three accused had been to his lorry for food. He

denied the fact that Kailashbhai conveyed to him that all the three took snacks on lorry and on demanding money, Kailashbhai was beaten. He stated that he had tied handkerchief on knife blow, but he lost said handkerchief in hospital. While P.W.2 – Nanalal Manekchandji, an eye witness stated in his deposition that at 10.30 p.m. accused No.1 – Kaliyo had been to lorry for snack, Kailashbhai demanded money from Kaliyo and, thereafter, he gave abuses and went away from that place. Thereafter, Kaliyo and other two persons in all three persons came to the lorry and started quarreling with Kailashbhai. Kaliyo had iron rod with him and he inflicted blow by iron rod on Kailashbhai, which was landed on his right hand. The other persons had nothing in their hands, but they were grappling. According to this witness, he intervened and Kailashbhai stated that a knife blow was given to him. But according to this witness, he had not seen this blow of knife given by accused – Kaliyo. Before the Court, he identified the accused No.1, but could not identify other two accused. In his cross-examination, he stated that at the time of incident at lorry, there were other 10 to 15 customers. Kaliyo alone had first come and after taking snacks, he did not pay an amount and he abused

and ran away at that time. Neither he nor witness – Naginbhai intervened. Kaliyo and other two persons were shouting in anger and with loud voice. He did not intervene because he was preparing Dhosa. With a blow of iron rod inflicted by Kaliyo, Kailashbhai had fallen down on the ground. Kailashbhai first stated that he was hit by knife blow. The witness stated that he saw a blow of iron rod inflicted upon Kailashbhai. Thereafter, Kailashbhai had fallen down on the ground and he could not say what Kaliyo had used for beating Kailashbhai. This is all is the material evidence.

[14] Now the prosecution came with specific case that at about 10.30 p.m., accused – Kaliyo came at lorry for snacks and on demanding the money by Kailashbhai, Kaliyo was got excited and after giving abuses, he ran away. After sometime, he brought other accused and accused No.1 had an iron rod. He started beating Kailashbhai with an iron rod. Thereafter, accused No.1 took out a knife from his waist and inflicted blow on left side of the stomach of Kailashbhai. Accused No.3 – Popatji started beating Kailashbhai with his belt. Accused No.2 – Rakesh started beating Kailashbhai with fist and P.W.2 –

Nanalal Manekchandji and P.W.4 – Naginbhai Kasturbhai intervened and got Kailashbhai separated from the accused.

[15] Now this case of the prosecution undoubtedly could not be proved by the prosecution through above evidence. We find many contradictions in the evidence, firstly complainant – Sureshbhai Shridhar Sheti stated in very vague terms that Kailashbhai conveyed to him that he was beaten by knife and belt. Kailashbhai was conscious till he was shifted to the hospital. Even then, the details of the incident, according to the complainant could not be conveyed to him by Kailashbhai that how a knife blow and by whom was inflicted to him. We find two versions in respect of occurrence of incident. One version is that all the three accused came for snacks and Kailashbhai demanded the amount which resulted in attack by the accused upon Kailashbhai. This version is found in the evidence of complainant – Sureshbhai Shridhar Sheti as stated by him in his deposition at Ex.13. While second version stated by P.W.2 – Nanalal Manekchandji, an eye witness is that first accused came for snacks. He took the food and did not pay the amount. Kailashbhai demanded the amount, but accused

No.1 abused him and went away from that place and, thereafter, all the three accused came together and present incident occurred.

[16] From the medical evidence, it is clear that the deceased had only one stab wound when he was brought to the hospital at Gandhinagar. P.W.1 – Kantilal Ranchhoddas Patel and P.W.14 – Chandrakant Bachubhai Patel were very much sure about this fact that there was no other injury on the body of Kailashbhai and, therefore, the fact that Kailashbhai was beaten by iron rod, belt and fist, could not be corroborated and a serious doubt is created in the prosecution case. About the knife blow also, it could not be established by the prosecution beyond reasonable doubt that who was author of the said blow. The witness – Nanalal Manekchandji, P.W.2, an eye witness stated that he did not see any knife blow inflicted upon Kailashbhai, but Kailashbhai stated that accused No.1 had given him a blow. According to this witness, he was present at lorry and intervened in the quarrel and he would not have missed the vital fact of the incident which caused ultimately death of the injured. This witness was not declared hostile by the prosecution. Therefore, appreciating the evidence

as has been recorded by the trial Court, it has been revealed that firstly, the story of the prosecution about beating by iron rod and belt by the accused, could not be corroborated, on the contrary falsified by the deposition of witnesses and secondly, the evidence is too ambiguous about the authorship of the blow by knife which ultimately caused death of Kailashbhai. In this respect, the evidence of the Investigating Officer Joitaji Mathurji, P.W.13 examined at Ex.41 is material to be referred to. In his deposition, in cross-examination, he stated that when he received the complaint, he also received Vardhi at Ex.31 along with complaint and in the said Vardhi, there was no names of any accused nor any detail was there in respect of the weapons. He stated that P.W.2 – Nanalal Manekchandji did not state before him that injured Kailashbhai conveyed to Nanalal Manekchandji that a knife blow was inflicted to him nor witness Nanalal Manekchandji stated before him that Nanalal Manekchandji was conveyed by Kailashbhai that accused No.1 had inflicted a knife blow upon him. From the statement of Nanalal Manekchandji, the role played by each of the accused could not distinctly be made out. While second Investigating Officer in his deposition in para-2 of

his cross-examination admitted in clear terms that either in his investigation or investigation as carried out by Joitaji Mathurji, P.W.13, it was not revealed that accused No.1 had inflicted a knife blow. According to this witness, except as conveyed by deceased to complainant, the fact of knife blow inflicted upon deceased, was not revealed during investigation.

[17] From the above, it becomes clear that the evidence of the prosecution in respect of the incident is ambiguous, unreliable and not trustworthy as two versions emerges from the evidence in respect of the incident. The author of knife blow could not be established by the prosecution beyond reasonable doubt. The story of prosecution that deceased was hit by a belt and iron rod stands falsified, though the deceased was conscious when he was shifted to hospital. He could not convey vital detail of the incident to the complainant or at least complainant could not depose vital details of the incident, that might have been conveyed to him by the deceased. This resulted into the inference that the complainant also was not reliable witness.

[18] With reference to the above appreciation, if the medical evidence is taken into consideration, we find confusion amongst the evidence of two Doctor witnesses i.e. P.W.1 – Kantilal Ranchhoddas Patel and P.W.14 - Chandrakant Bachubhai Patel, the cause of death was gangrene and septicemia. In his cross-examination, P.W.14 – Chandrakant Bachubhai Patel deposed in uncertain terms that the septicemia was infected on account of surgical incision because laparotomy was done and four organs, thereafter, were infected. At least we are unable to even make out from the deposition of P.W.14 – Chandrakant Bachubhai Patel that septicemia was direct result of stab wound which was noticed by P.W.1 – Kantilal Ranchhoddas Patel. According to P.W.1, spleen was injured and wound through and through was found spleen, therefore, spleen was removed. While conducting postmortem, it appears that P.W.14 – Chandrakant Bachubhai Patel had noticed spleen, that is evident from the postmortem note at Ex.43.

[19] Learned trial Judge appreciated the above circumstances appearing from the evidence of the prosecution and, therefore, came to the conclusion of acquittal of the accused. When we re-appreciated the

evidence as aforesaid, we have also found those infirmities as stated above in the prosecution case, resulting in conclusion that the case of the prosecution was doubtful and could not be proved beyond reasonable doubt. This is an appeal against the order of acquittal and the scope of the appeal is well settled that though there may be legitimate second view possible from the same evidence recorded during the trial than taken by the trial Court, the order of acquittal cannot be set aside lightly unless and until, it is found that findings arrived at by the trial Court are manifestly erroneous, palpably wrong, perverse and demonstrably unsustainable. We are unable to come to the conclusion after scanning the reasons assigned by the trial Judge for acquittal with reference to re-appreciation of the evidence undertaken by us that the reasons assigned by the trial Judge to give benefit of doubt to the accused are manifestly erroneous, palpably wrong, perverse or demonstrably unsustainable. We, therefore, come to the conclusion that the judgment and order impugned in this appeal warrants no interference and hence, the following order.

Appeal stands dismissed.

[J. R. VORA,J.]

[SMT. ABHILASHA KUMARI,J.]

(vijay)